

IDEA–Reauthorized Statute¹

CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act will be effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, that covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements. This document addresses provisions of IDEA regarding the alignment between IDEA and No Child Left Behind, referred to in this document as the Elementary and Secondary Education Act (ESEA) of 1965, which will take effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Defines the provision for providing services

To the extent consistent with the number and location of children with disabilities in the state who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency (LEA), provision is made for the participation of those children in the program assisted or carried out under IDEA by providing for such children special education and related services in accordance with Section 612(a)(10)(A). [612(a)(10)(a)(i)]

2. Amounts expended

Amounts to be expended for the provision of services (including direct services to parentally placed private school children) by the LEA shall be equal to a proportionate amount of federal funds made available under Part B. [612(a)(10)(A)(i)(I)]

3. Requires child find² in private schools

In calculating the proportionate amount of federal funds, the LEA, after timely and meaningful consultation with representatives of private schools, shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the LEA. [612(a)(10)(A)(i)(II)]

4. State and local funds must supplement and not supplant proportionate amount.

State and local funds may supplement, and in no case supplant, the proportionate amount of federal funds required to be expended. [612(a)(10)(A)(i)(IV)]

5. Equitable participation.

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities, and an accurate count of such children. [12(a)(10)(A)(ii)(II)]

6. Activities.

In carrying out Section 612(a)(10)(A)(ii), the LEA, or where applicable, the state educational agency (SEA), shall undertake activities similar to those activities undertaken for the agency’s public school children. [612(a)(10)(A)(ii)(III)]

7. Cost.

The cost of carrying out Section 612(a)(10)(A)(ii), including individual evaluations, may not be considered in determining whether an LEA has met its obligations under Section 612(a)(10)(A)(i). [612(a)(10)(A)(ii)(IV)]

8. Completion period.

Such child find process shall be completed in a time period comparable to that for other students attending public schools in the LEA. [612(a)(10)(A)(ii)(V)]

9. Requires maintenance of records on number of children evaluated and number found eligible as part of child find.

Each LEA shall maintain in its records and provide to the SEA the number of children evaluated under Section 612(a)(10), the number of children determined to be children with disabilities, and the number of children served. [612(a)(10)(A)(i)(V)]

10. Adds additional consultation requirements.

To ensure timely and meaningful consultation, an LEA, or where appropriate, an SEA, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding:

- The child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers and private school officials will be informed of the process;
- The consultation process among the LEA, private school officials and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- By whom special education and related services will be provided, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children and how and when these decisions will be made; and
- How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA shall provide to the private school officials, a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

[612(a)(10)(A)(iii)]

11. Written affirmation.

When timely and meaningful consultation ... has occurred, the LEA shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the SEA. [612(a)(10)(A)(iv)]

12. Right to complain to the SEA and appeal to the secretary.

A private school official shall have the right to submit a complaint to the SEA that the LEA did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance [regarding equitable participation] by the LEA to the SEA, and the LEA shall forward the appropriate documentation to the SEA. If the private school official is dissatisfied with the decision of the SEA, such official may submit a complaint to the secretary by providing the basis of the noncompliance [regarding equitable participation] by the LEA to the secretary, and the SEA shall forward the appropriate documentation to the secretary. [612(a)(10)(A)(v)]